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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/342,866 06/29/99 LIN

W 244/031

023410
NEAL M COHEN
2424 SE BRISTOL STREET
SUITE 300
NEWPORT BEACH CA 92660

TM02/0924

EXAMINER

THOMPSON JR, F

ART UNIT

PAPER NUMBER

2165

DATE MAILED:

09/24/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.
09/342,866

Applicant(s)

LIN

Examiner

Forest Thompson Jr.

Art Unit

2165



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 8/16/01 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

4. ☐ Applicant's reply has overcome the following rejection(s): _____
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
applicant's arguments are not persuasive. The prior art of record discloses the argued feature claimed by applicant in the independent claims (see Attachment).
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 1-15 and 17-44
9. ☐ The proposed drawing correction filed on _____ a) _____ has b) _____ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
11. ☒ Other: Note: Applicant's Miscellaneous Communication filed on 9/4/01 reflects the communication involving the Interview Summary dated 8/21/01.

MELANIE A. KEMPER
PRIMARY EXAMINER

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ATTACHMENT

To Advisory Action

Continuation of Section 6, PTO-303 (Advisory Action):

1. Applicant argues in Paper #15 that *neither the newly-cited Walker reference (U.S. 6,216,111 B1), nor any of the other cited references, disclose that the price of the product is scaled to the performance of the buyer during a Price determining Activity (PDA). Applicant's claims, on the other hand, all recite language that the price of the product is scaled to the buyer's performance during the PDA..., and the PDA in turn is described in detail in the specification as an activity which is performed and which performance thereof is used to determine the price of the product.* Examiner disagrees. This aspect of the invention is present in **Walker et al.**, as presented in paragraphs 2-4 below.

2. The Final Rejection (see Paper #13) presented:

Goldhaber et al. (U.S. Patent No. 5,855,008) does not specifically disclose determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer. However, **Walker et al.** discloses the program is further adapted to initiate a transfer of the value to the consumer in response to the consumer receiving the sales presentation (col. 3 lines 6-8); and an automated sales presentation begins which informs the customer that he will receive \$2 for each question he answers correctly (col. 7 lines 21-23). Therefore, it would have been obvious to one skilled in the art at the time

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the invention was made to combine **Goldhaber et al.** and **Walker et al.** to disclose determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer, because this provides incentive to the buyer to participate. Examiner maintains the rejection.

3. Additional support for this rejection, but not relied in Paper #13 for the rejection, is presented by **Walker et al.** (U.S. Patent No. 6,216,111) which further discloses:

- *The present invention is also applicable to situations where the customer and central controller communicate by other means, such as online computing (col. 8 lines 31-34), i.e., doing business on a global communications network;*
- *the customer places a call (perhaps with a per-minute charge) to the central controller and answers questions, being instantly rewarded with credits on his credit card account as prize money for correct answers (8 lines 57-61), i.e., receiving rewards for correct answers; and*
- *The real-time reward can constitute an actual transfer of monetary value to the customer's credit card, initiated as the information is presented. Further, an automated practice is provided for accelerating the reward plus the termination of the communication if the customer should indicate an acceptance of an offered product (col. 9 lines 10-15), i.e., applying the reward toward the cost of purchasing a product and thereby determining the reduced price payable by the customer.*

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4. Therefore, based on section 2 and section 3 above, separately or in combination, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Goldhaber et al.** to disclose determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer, as disclosed by **Walker et al.**, because this provides incentive to the buyer to participate, including reduced costs to the customer when purchasing a product. The rejection is maintained.